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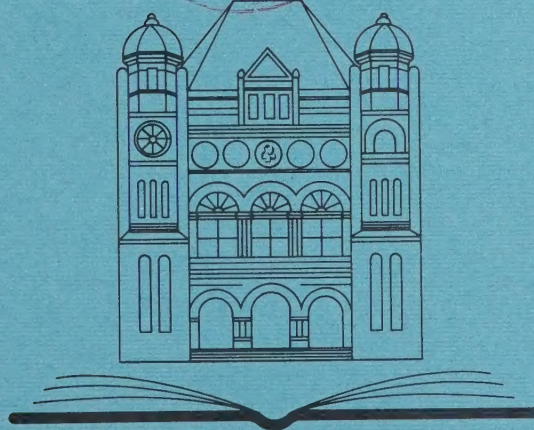




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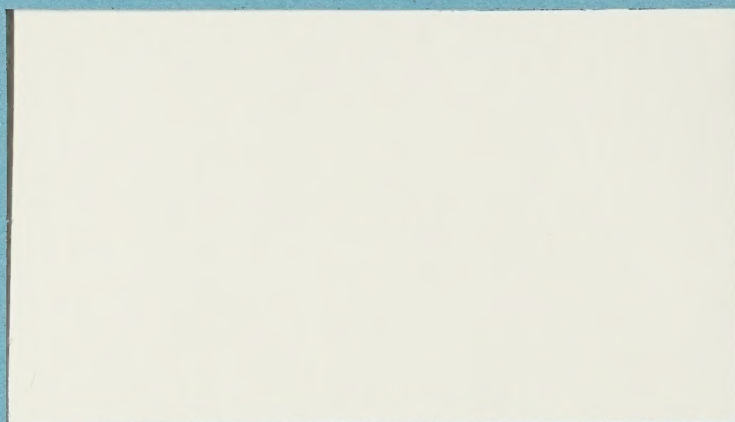
**SUMMARY OF PROVINCIAL/TERRITORIAL  
STATEMENTS ON THE SEPTEMBER 1991  
FEDERAL GOVERNMENT  
CONSTITUTIONAL PROPOSALS**

*Current Issue Paper 125*



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CONSTITUTIONAL PROPOSALS**

*Current Issue Paper 125*

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## INTRODUCTION

If there is to be a constitutional agreement in the next few months, responsibility will ultimately fall to 11 heads of government. Canada's 10 provinces and the federal government will have to negotiate its precise nature, and then ensure the agreement is ratified by at least seven and perhaps all of their respective legislatures. The developing constitutional positions of the provinces, individually and collectively, are therefore of immense interest to legislators and citizens. (The positions of Canada's Aboriginal organizations and leaders are reviewed in Current Issue Paper #126.)

The federal constitutional proposals, released in September 1991, were a key focus of national discussion through the fall and winter. A Special Joint Committee of the Senate and the House of Commons held public hearings and five major conferences across the country since September, and released its final report March 1, 1992. This paper provides a comparative summary of the public response to the federal proposals by nine of Canada's provincial governments and that of the Yukon. In most cases, the statements summarized were made by the Premiers to the federal Special Joint Committee, although in two cases the statements were made by senior Cabinet ministers.

The intention here is to provide a brief, useful document. The summary is not designed to be totally comprehensive, nor reflect precisely the wording of the speaker. Rather, it has extracted short summary statements on the key issues. If readers need further detail about any particular provincial statement, they should refer to the original document.

The key issues framing this paper are:

- *Fundamental characteristics and values of Canada.* What it means to be a Canadian, the basic national values and characteristics we might recognize in the Constitution, and how we might recognize them.

- *Charter of Rights and Freedoms.* Proposed amendments to better protect the rights of Canadians, through rewriting existing sections, adding new rights and/or altering the so-called "override clause".
- *Aboriginal issues.* Proposals affecting the relationship between Aboriginal peoples and the governments and institutions of Canada, including such issues as self-determination, self-government and land claims.
- *Constitutional change and the economy.* Proposed constitutional changes that might affect the Canadian economy, whether in the way governments regulate the economy or in the way they spend money.
- *Quebec's future in Canada.* Proposed constitutional changes that might affect Quebec uniquely or that relate to Quebec's traditional concerns vis-à-vis constitutional reform. Unavoidably, there is some overlap between this section and others, particularly Division of Powers, Official Languages and National Institutions.
- *Division of powers.* How legislative powers might be divided between the federal and provincial levels of government.
- *National institutions and the political system.* Proposed reform to the Senate, the House of Commons (including the electoral process) and the Supreme Court of Canada, and proposed new federal institutions.
- *The process of constitutional reform.* Proposals to change the reform process itself, including such issues as amending formulas, a constituent assembly and referenda.

These sections parallel the organization of CIP #122, which summarizes 21 major constitutional documents, reports and proposals. Interested readers may wish to use that paper as a companion to this one.

This paper does not attempt to summarize provincial/territorial statements in response to the report of the Special Joint Committee, which was released as this paper was being finalized. The initial response of most Premiers was relatively cautious and new positions may not be formalized until the next round of official consultations begins. In the meantime, the summaries in this paper remain useful indications of provincial and territorial views going into the next crucial stage of constitutional negotiation.



## THE PROVINCIAL/TERRITORIAL STATEMENTS

### **British Columbia**

Moe Sihota, B.C.'s Minister of Labour and Consumer Affairs, and Minister Responsible for Constitutional Affairs, made a statement to the Special Joint Committee on January 27, 1992 in Victoria. (Premier Michael Harcourt was out of the country on a trade mission.) The province's New Democrat government was relatively new, having being elected in September 1991. Mr. Sihota indicated that he would not be putting forward "hard and fast bottom-line positions," but general directions for his province. The provincial constitutional committee is yet to be reorganized because of the election.

### **. Alberta**

Deputy Premier James Horsman presented a statement to the Special Joint Committee on January 22, 1992 in Edmonton. He is also chair of Alberta's Special Select Committee on Constitutional Reform, which is expected to release its final report to the legislature in late February. In his statement, Mr. Horsman recalled the province's interest in Senate reform -- specifically the Triple-E model -- as indicated in the report of a provincial constitutional committee in 1985.

### **Saskatchewan**

Premier Roy Romanow spoke to the Special Joint Committee on January 21, 1992 in Regina. As in British Columbia, his government is somewhat new, and Mr. Romanow said the views he would be expressing were preliminary. He also indicated that the people of Saskatchewan were preoccupied by the economy, and said constitutional reform should not be the only issue on the national agenda.

**Manitoba**

Premier Gary Filmon addressed the federal Committee on February 11 in Ottawa. He indicated Manitoba was seeking common ground in the constitutional discussion, and urged all leaders to overcome regional and provincial limitations. Mr. Filmon referred throughout his presentation to the recommendations of the Manitoba Constitutional Task Force, which had released its final report in October 1991.

**Ontario**

Premier Bob Rae made a statement to the Special Joint Committee on January 13 in Toronto. Underlying his specific comments was his expressed view that there needed to be more direct negotiation on constitutional issues among the provinces and the federal government, and especially involving Quebec. He also stressed that Ontario's legislative committee studying the Constitution had yet to report (it did so February 5). As well, Mr. Rae said the Special Joint Committee should be seen as the beginning of the reform process, not the end.

**New Brunswick**

Premier Frank McKenna spoke to the federal Committee January 15 in Fredericton. He mentioned the report of New Brunswick's constitutional committee, which had been released January 14, and his expectation that the provincial committee would also meet with its federal counterpart. Mr. McKenna gave no indication of whether he endorsed the provincial committee's recommendations, and went on to give his "personal reaction" to the federal proposals.

**Nova Scotia**

This statement to the federal committee was unusual in that it was made jointly by Premier Don Cameron and the two provincial opposition leaders in Halifax on January 16. Nova Scotia's legislators have agreed to develop the province's



constitutional positions together. The Special Joint Committee heard from the province's non-legislative constitutional committee the next day, January 17. At the end of their statement, the leaders indicated they would be developing more detailed positions on the issues in the near future.

### **Prince Edward Island**

Premier Joe Ghiz addressed the federal committee in Charlottetown October 9, 1991. He did not specifically discuss how final the views expressed were but indicated in some areas that consensus was desirable. Mr. Ghiz also mentioned that PEI's constitutional committee would appear before the federal committee to discuss its report, released in September.

### **Newfoundland**

Premier Clyde Wells made this presentation on January 14, 1992 in St. John's. The province's constitutional committee had submitted an interim report five days before to the Cabinet, and Mr. Wells made extensive reference to the committee's recommendations. At the outset, he told the Joint Committee that although he would have preferred a constituent assembly to a Parliamentary committee he could assure them of his utmost cooperation. Mr. Wells addressed each of the federal government's 28 proposals in turn, and also submitted a copy of his submission of April 9, 1991 to the Beaudoin-Edwards committee on the Constitutional Amending Process.

### **The Yukon**

Premier Tony Penikett appeared before the federal Committee on January 28 in Whitehorse. He cited some particular concerns of the Yukon in the constitutional debate, including its opposition to the existing amending formula and its implications for a territory seeking to become a province. Like some other Premiers, Mr. Penikett urged the Committee to set priorities on the agenda and deal with crucial matters first.

## FUNDAMENTAL CHARACTERISTICS AND VALUES OF CANADA

### British Columbia

- Our success as a nation lies in our adherence to three fundamental values: our commitment to social justice; our sense of tolerance; and our desire for equality of treatment. This constitutional process must pay homage to these values.

### Alberta

- Three fundamental principles were made clear throughout the consultation process in Alberta: Albertans want to keep Canada whole; they desire equality among individuals and among provinces; and they want to reform Canada's Senate to better represent provincial interests in federal decision-making.

### Saskatchewan

- The 14 items listed in the federal proposal for a Canada Clause say little about national unity and identity, and seem to concentrate on special interests and special groups. Are we not more than an aggregation of special interests?
- While the Canada Clause must reflect our diverse identities, it must also express belief in our national dimension and belief that our human qualities are enhanced through participation in the life of the nation.

### Manitoba

- We must recognize our fundamental characteristics by including a Canada Clause in the Constitution. Manitoba's Constitutional Task Force concluded that Canadian unity would be strengthened by a statement affirming the national identity and character of Canada, and recognizing the diverse elements of the Canadian mosaic.
- More specifically, Manitobans express their support for a vision of Canada that is inclusive rather than exclusive, and that would transcend individual, provincial and regional differences. The Task Force recommended:
  - that the Canada Clause begin with a clear statement expressing the commitment to a strong and united Canada; and



- that there should be a recognition of the fundamental equality of the provinces. Such a statement would not deny the continued existence of numerous practical differences in relationships between provinces and the federal government. Nor must all provinces share the exact same duties and responsibilities. After all, flexibility is a guiding principle of federalism.
- Although the Task Force did not address all issues in the federal proposal, I know Manitobans support such values as the equality of men and women, fairness, openness, and the full participation in Canadian citizenship, and the objectives of sustainable development.

### **Ontario**

- No specific comments.

### **New Brunswick**

- The existence of English and French communities has been a central feature of our development as a nation since long before Confederation, and is a fundamental characteristic of Canada. New Brunswick is committed to seeing the principle of the equality of our two linguistic communities entrenched during this round of constitutional reform.

### **Nova Scotia**

- The coexistence of the French-speaking and English-speaking communities is a fundamental characteristic of Canada.
- Universal health care should be protected by reference to national health care standards in the Canada Clause.

### **Prince Edward Island**

- I support the elements proposed for inclusion in the Canada Clause, which is meant to give an understanding of what it means to be Canadian. I ask that consideration be given to an introductory phrase in the Canada Clause that refers to "inheritance," giving context to the list of characteristics and values.

## Newfoundland

- The following fundamental principles must be reflected in any constitutional proposals that would enjoy support of the substantial majority of Canadians reasonably representative of the different parts of the country:
  - The interests of the whole nation must be given priority over those of any part or parts.
  - Every citizen is equal to every other citizen in his or her status, rights and political power.
  - Every province is equal in its status and rights.
  - The nation and the individual provinces are collectively committed to promoting equal opportunities for the well-being of all Canadians, furthering economic development to reduce disparities in opportunities, and providing essential public services of reasonable quality to all Canadians.
  - We must continue to honour and constitutionally provide for the original understanding between the French and English speaking peoples of the colonies of North America in 1867, although in the intervening years Canada has benefited greatly from the tremendous contribution of diverse other cultures.
  - Aboriginal peoples must be acknowledged to have the right to preserve their culture, language and way of life within their lands, and, if desired, the right to self-government of their people within those lands.
- If there is to be a Canada Clause identifying the essential values of the Canadian federation, it would be unacceptable not to include a recognition of the principle of the equality of the provinces.

## The Yukon

- We are prepared to endorse the proposal to add a Canada Clause to the Constitution to recognize some basic elements of the Canadian identity, and the shared values that inform our sense of who we are as Canadians. Among the proposed clauses is a clause that would affirm the necessity of preserving and strengthening Canada's two national linguistic communities.
- We also support the placement within the Canada Clause of a recognition of "the special responsibility borne by Quebec to preserve and promote its distinct society."

## CHARTER OF RIGHTS AND FREEDOMS

**British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick and Nova Scotia** had no specific comments. Comments on the distinct society clause appear under Quebec's Future in Canada.

### Manitoba

- Our Constitution must guarantee that all Canadians enjoy the same rights and freedoms anywhere in Canada.

### Prince Edward Island

- From the perspective of Prince Edward Island, property rights should not be put in the Constitution as this might upset the precarious balance in PEI between individual and collective rights as they apply to the ownership of land. Loss of this balance could threaten sustainable development in this province in agriculture, tourism and forestry, and endanger the island's ground water supply.

### Newfoundland

- Guaranteeing property rights, while not of pressing importance, should be acceptable to all Canadians provided that it would be within the normal framework of zoning, environmental, marriage and other such generally applicable laws, together with the right not to be deprived of property without fair and adequate compensation.
- The notwithstanding clause should be eliminated. Making it slightly more difficult to use, as the federal government proposes, is of little value but does no harm.

### The Yukon

- Recognizing that the fundamental rights of Canadian should only be overridden in the most desperate circumstances, we support the proposal to raise to 60% from 50% the majority required within Parliament or a provincial legislature to invoke the notwithstanding clause.
- We are opposed to the inclusion of property rights in the Charter, as these rights are already protected in myriad ways by our legal system.



## **ABORIGINAL ISSUES**

### **British Columbia**

- The B.C. Government recognizes the political legitimacy of Aboriginal title and the inherent right to self-government. While much consideration must be given to exactly how the concept of self-government can and should be entrenched in the Constitution, B.C. is committed to ensuring this round of negotiations does in fact deal with Aboriginal issues in a manner that satisfies the legitimate aspirations of First Nations.

### **Alberta**

- The federal government, all provinces, the territories and, where appropriate, the Aboriginal people must sit down together at this constitutional table. No success can come out of any process that locks out any of the partners in Confederation.

### **Saskatchewan**

- We are concerned that, under the federal proposals, the process of negotiating self-government could grind on for 10 years and then the courts would be required to write an important and complex part of the Constitution with little more than an outline to go on.
- We hope the parallel aboriginal process and the federal government can clarify this area in ways that will allow a fair, timely and satisfactory settlement.
- In the meantime, we need elaboration on the formulation of this inherent right to self-government -- which Saskatchewan recognizes -- how it will be determined, and how it will fit with other parts of the Constitution.

### **Manitoba**

- Manitobans recognize the Aboriginal peoples' inherent right to self-government within the Canadian constitutional framework. We support an entrenched process, acceptable to Aboriginal people, that would work towards a definition and practical implementation of self-government.
- We are very interested in the idea of a national treaty of reconciliation as proposed by the Premier of Prince Edward Island.
- A financial base to make self-government viable will be a critical issue in the process. Our province and others have been concerned by recent federal

government attempts to "off-load" to the provinces some of its responsibilities for services for Aboriginals.

- We believe Aboriginal Canadians are as entitled as all other Canadians to the rights protections embodied in the Charter of Rights, and that self-government should not erode that protection.

## **Ontario**

- There will be no constitutional deal without entrenching the inherent right to Aboriginal self-government.

## **New Brunswick**

- Beyond question, Canada needs a new partnership with its Aboriginal peoples. A majority of Canadians now accept the Aboriginal peoples' case for an inherent right to self-government.

## **Nova Scotia**

- We agree that there is an inherent right to Aboriginal self-government, provided that this is within the Constitution of Canada, does not convey an assertion of international sovereignty, and its relation to land claims is clearly defined. The nature of self-government must evolve from negotiations between the Aboriginal peoples and the federal and provincial governments.
- What we need at this point is some idea of the various models of self-government that might meet the needs of the Aboriginal peoples, recognizing that these needs vary from province to province and, within the Aboriginal community, from group to group.
- We are willing to sit down with the Mi'kmaq in Nova Scotia to negotiate with them just how self-government would work in this province, including the definition of structures and powers of Aboriginal government and how these would relate to the provincial and federal governments.

## **Prince Edward Island**

- The Special Committee of our legislature has given a clear message of support for the recognition in principle of the right of Aboriginal self-government during this round of constitutional reform.
- I recognize that the proposed federal approach to entrenching self-government is not acceptable to a segment of the Aboriginal people. However, it is timely

and imperative that the Aboriginal peoples and the federal and provincial governments take advantage of the high level of support prevailing in Canada to show achievement in this round. I therefore plead with the Assembly of First Nations and all other representative groups to work with this Special Joint Committee as a forum for moving towards what is *possible* as opposed to what is *perfect*.

- As a participant in this constitutional process, I am prepared to consider application of the Charter of Rights to Aboriginal societies and governments in a way that reinforces their cultural, legal, economic and linguistic aspirations.
- I can to some degree support the idea that recognition of an inherent right to self-government is the legal and moral basis for modern Aboriginal self-government. However, I will need help from the Aboriginal people; and the Special Joint Committee, to see how this concept can be implemented as the basis for an independent or parallel jurisdiction in Canada.

### **Newfoundland**

- There should be provision for the Aboriginal people's special participation in constitutional negotiations as some changes in the federal government's proposal specifically affect Aboriginal people.
- While remaining a part of and subject to the overall sovereignty of Canada, Aboriginal people must be accorded the right to preserve their culture, language and way of life within their lands and, if desired, the right to self-government of their people within those lands.
- One way to deal with the issue of what is meant by self-government is to define what it is not: specifying what federal and provincial/territorial powers and jurisdiction would continue to apply in Aboriginal areas, and that all other matters would be subject to Aboriginal laws and government.
- Whether or not a separate process is necessary in order to deal with the present constitutional deficiency with respect to Aboriginal status and rights should largely be determined by the Aboriginal people. If they feel it is necessary, it should be provided for.
- Until the nature of Aboriginal self-government is resolved, and the basic structure of the Senate agreed upon, Newfoundland would strongly oppose using the Senate as a means of providing special representation for any group or sector of society. The federal proposal for Aboriginal representation in the Senate is opposed, unless Aboriginal people are provided a special constitutional status within a specific area or territory.



## **The Yukon**

- We support the constitutional recognition of the inherent right to self-government and the immediate constitutional protection of self-government agreements as they are reached and ratified.
- Recognizing that this right to self-government exists now and always has existed, we oppose the proposal to delay general enforceability of this right for 10 years.
- We are pleased to see the proposals include the resumption of regular first ministers' conferences on Aboriginal issues.
- This government would have to be confident in the means by which guaranteed Aboriginal representation in the Senate would be achieved before it could support it.

## **CONSTITUTIONAL CHANGE AND THE ECONOMY**

### **British Columbia**

- The Constitution must be flexible enough to accommodate British Columbia's different needs in relation to economic development and economic affairs. This is because B.C. has quite distinct economic circumstances compared to the rest of Canada, including greater dependence on resource industries and more trade with the Asian countries.
- There needs to be a review of economic powers to ensure that provinces are better able to achieve their economic potential while respecting the need for strong national institutions to ensure equal economic opportunities for all Canadians.

### **Alberta**

- No specific comments.

### **Saskatchewan**

- We must be prepared to tolerate some imperfections in the economic union. If these imperfections become truly disruptive, we can use existing intergovernmental means to respond to them.
- The federal proposal to broaden s. 121 of the Constitution attempts to compress a large and complex area into a few words, and then provide some

rather one-sided or illusory exceptions. The answer that "the courts will decide" is just not good enough; the potential here for litigation is unlimited.

- The proposal ignores the need for provinces and regions to develop their economies. This entails pursuing both economic and social objectives that may be in conflict with a court's view of the perfect economic union. One wonders whether courts are the right body to deal with these issues, as they require balancing economic, social and regional priorities.
- The proposed new federal power over the economy, ratified by the provinces through the Council of the Federation, has a high potential to centralize all economic powers and upset the balance of the federation. This power is open-ended, and could allow the federal government, with the right mix of provinces on its side, to strip dissenting provinces of much of their jurisdiction and fiscal autonomy.

### **Manitoba**

- No specific comments.

### **Ontario**

- We have no enthusiasm for the proposed new federal power, 91A.
- Ontario has always taken a very strong position in favour of a stronger common market in the country and we continue to take that position. We are happy to discuss that.

### **New Brunswick**

- The federal proposals on strengthening our economic union have made an important and useful contribution to the constitutional dialogue. The federal and provincial governments must do a far better job of coordinating their formidable economic tools. Our task is to arrive at mechanisms that are both useful and acceptable to all provinces.
- New Brunswick has championed the removal of internal trade barriers for some time and would support the concept of free movement of people, goods, services and capital. This thrust should include improvements to the national infrastructure -- highways, communications links and energy sources.

## Nova Scotia

- In general, governments should work together to improve the economic union and work together to reduce economic disparities by promoting the economic development of each province.
- Nova Scotia is prepared to consider the federal government's recent proposals regarding the economic union. Because they are complex and require close scrutiny, we believe that rather than seek to act right away on these measures, the governments of Canada should agree to a process, with deadlines, for the economic agenda. Our particular concerns are as follows:
  - We understand the reasons behind the proposal to broaden s. 121 of the Constitution to eliminate internal trade barriers, and provide for a new federal power to manage the economy. However, we also recognize that it takes time to negotiate workable arrangements, and believe both measures require considerably more time for Canadians to assess.
  - Similarly, we can support the idea of harmonizing economic, fiscal, and monetary policies across governments but not necessarily that of entrenching guidelines for this harmonization as these may unduly constrain individual provincial governments.
  - The proposal to redefine the Bank of Canada's mandate to achieving price stability is too limiting. Such a narrow mandate would only enshrine existing Bank policy, which has hurt Nova Scotia's economy in the past; it would also marginalize the role of the proposed regional consultative panels.
  - In terms of the proposals to reduce federal activity in various specific areas, we believe such reduction, especially in financial support, is not in the best interests of smaller provinces without adequate resources to assume further authority in these fields. In one area -- the Atlantic fishery -- we are adamant there be no reduction of federal responsibility.
- To ensure that all regions of the country may participate equally in the economic union, s. 145 of the *Constitution Act, 1867* should be modernized and expanded. This section recognizes the importance of transportation and communications infrastructure to Confederation. The revised section would affirm the federal government's responsibility to provide and maintain reasonably equal, available and affordable infrastructure in transportation, communications and energy sources in each province. This infrastructure would include modern rail links, highways, air networks and seaports.
- Section 36 of the *Constitution Act, 1982* should be clarified to ensure that regional economic development is properly targeted towards comparable



economic opportunities in each province; and that higher payments for economic development are made to those provinces that suffer the greatest economic disparities. The explicit objective of these payment should be to eliminate the disparities and provide reasonably comparable levels of employment opportunities in all provinces.

### Prince Edward Island

- The federal proposals for the economic union deal with efficiency issues but not with equality in the distribution of income within Canada. I submit that now is an opportune time to strengthen Canada's constitutional commitment to equality, expressed through s. 36 of the *Constitution Act, 1982*.
- PEI generally supports the changes proposed for s. 121 of the Constitution. We do have some concerns. We need to know more about the process of determining what constitutes an economic barrier. This process cannot be allowed to nullify the legitimate policy role of a provincial government. We would not, for example, want an amended s. 121 to be used to eliminate agricultural supply management marketing boards.
- The harmonization of economic policies through intergovernmental coordination would be beneficial for Canada, but such coordination must permit regional differences in fiscal policy as local conditions require.
- We welcome the thrust towards increased consultation on the part of the Bank of Canada. However, the province would not want to see the Bank's mandate restricted to price stability, as this would deny it other legitimate objectives.
- The proposal to recognize labour market training as an area of exclusive provincial jurisdiction is of concern because it does not discuss the role of federal funding. It is more difficult in smaller, "have-not" provinces for either the provincial government or the private sector to assume such costs.

### Newfoundland

- Newfoundland generally supports removal of all barriers to interprovincial trade. However, we have to be careful to ensure an effective means of correcting regional economic disparity at the same time as we eliminate internal economic barriers. In addition, we question whether such measures should not require approval of provincial legislatures, rather than governments as proposed by the federal government.
- The federal proposal for a new power to manage the economic union needs further assessment. Our concerns are that it would require the approval of seven provincial governments, rather than legislatures; and that the opting-out provision seems to be unnecessary.

- The proposal to develop guidelines to harmonize economic policies has no place in the Constitution.
- Again, proposed reforms to the Bank of Canada should not be part of the Constitution.
- The proposal to recognize labour market training as an exclusive provincial field would seem unnecessary unless doing so would preclude any federal involvement. There is great concern in many parts of the country that such exclusion of the federal government would not be in the national interest.

### **The Yukon**

- This government is not convinced the proposals regarding the economic union should appropriately be entrenched in the Constitution, as economic policy is not necessarily something Canadians want to be eternal.

## **QUEBEC'S FUTURE IN CANADA**

### **British Columbia**

- The British Columbia Government expressly recognizes that the province of Quebec is historically and legally different from other provinces, and is in that sense a distinct society.
- B.C. does not support granting Quebec or any other province "special status" in the sense of having some sort of entitlement to superior powers, rights or privileges to the disadvantage of other Canadians.
- Words that recognize Quebec's position in Canada may not constitute a departure from any established constitutional principle, but rather are a reflection of constitutional reality. It is possible to be both distinct and equal; equality does not always require uniformity.
- In terms of economic development, B.C.'s interests are not significantly different from those of Quebec. For example, constitutional dialogue must address the matter of duplication of powers in such areas as forestry, tourism and agriculture, and concerns regarding jurisdiction over labour market and job training provisions.
- B.C. insists that any changes to the federal spending power take into account the impact of this power in both provincial priorities and finances.

## Alberta

- Equality of the provinces is generous enough to recognize and accommodate different needs based on historical, economic and cultural realities. Canada is not homogenous; "different" does not mean "unequal". Albertans embrace the diversity found in our country but say there should be no "second-class" or "hyphenated" Canadians. I must express my opposition to granting special powers to one province. If that is what is meant by "asymmetrical federalism," then it is not acceptable to Alberta.

## Saskatchewan

- The federal proposal for a distinct society clause in the Charter seems to alleviate many concerns raised about ambiguity in the Meech Lake Accord version. In particular,
  - its effect is confined to the Charter, thereby ruling out the concerns, in Saskatchewan at least, that it would somehow grant special legislative powers; and
  - it is defined, though not exhaustively, in terms of Quebec's French-speaking majority, a unique culture and civil law tradition.
- There are still questions about the effect of the distinct society clause, such as the interplay between it and the proposed Canada Clause.
- Quebec should recognize that there are other areas of constitutional concern, besides its own, that other regions of the country want to see addressed.

## Manitoba

- We believe that so long as no special powers are conferred, Quebec should be recognized as a distinct society.
- Our Task Force has emphasised the importance of maintaining a strong central government but also recommended flexibility in the division of powers. It said Manitoba should be open to a review of the current division of powers, including the federal spending power, and study the possibility of increased federal involvement in policy fields which might benefit from national policy making and/or coordination.



**Ontario**

- We are committed as a province to recognition of Quebec as a distinct society and to allowing Quebec to take its place as a full member of Canada. The federal proposal on the distinct society is constructive.
- We accept and affirm the Official Languages Act, and the principle of linguistic duality in federal jurisdiction.

**New Brunswick**

- Quebec's French-speaking majority, unique culture and civil law tradition have always made it distinct in Canada. More and more Canadians have come to understand what is meant by the definition of Quebec as a distinct society, and to support it.
- The existence of English and French communities has been a central feature of our development as a nation since long before Confederation, and is a fundamental characteristic of Canada. New Brunswick is committed to seeing the principle of the equality of our two linguistic communities entrenched during this round of constitutional reform.

**Nova Scotia**

- Nova Scotians could support the federal proposal for the recognition in the Constitution of Quebec as a distinct society. More specifically, we are ready to recognize that Quebec has distinct needs and requires certain powers to protect and promote its distinct society.
- However, this does not mean Nova Scotians are prepared to accept a major decentralization of power from the federal government. There are certain powers to which the provinces have no reasonable claim. Meeting Quebec's distinct needs should not become a pretext for granting all provinces unreasonable powers.

**Prince Edward Island**

- I am proud that our legislative committee considering the Constitution has firmly recognized Quebec's distinct status within Canada. It also has recommended that the powers necessary to protect and promote its language and culture be extended to Quebec under the Constitution.
- The proposal to negotiate bilateral agreements on culture could lead to a significant devolution of federal responsibilities. We believe the federal

government should retain the capacity to sustain national programs in multiculturalism, arts development and other areas.

## Newfoundland

- It has been this Government's position that recognizing Quebec as a distinct society does nothing more than formally acknowledge a historical and sociological fact. In the past, we have suggested this recognition should be in a revised preamble to the Constitution, but have also acknowledged that it might also be placed in the body of the Constitution provided it does not create a special status for one province or for a group of citizens.
- We propose restructuring the new section 25.1 (1) proposed by the federal government as follows, in order to limit the impact of the distinct society clause to Quebec law:

*25.1 (1) This Charter shall be interpreted in a manner consistent with*

*(a) the preservation of the existence of French-speaking Canadians, primarily located in Quebec, but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec; and*

*(b) in its application to the laws of Quebec, the preservation and promotion of Quebec as a distinct society within Canada.*

- Any agreements on immigration and culture negotiated between the federal government and a province should only be entrenched in the Constitution with the approval of seven provinces representing 50% of the population of the provinces.
- The proposal to limit the federal spending power is generally supported. However, Parliament must retain the power to meet the national commitment to provide for the well-being of Canadians, to further economic development to reduce disparity in opportunities, and to provide essential public services of reasonable quality.

## The Yukon

- We support the recognition of the distinct character of Quebec, in the proposed phrase to be included the Canada Clause and in the proposed section within the Charter.

## DIVISION OF POWERS

### British Columbia

- The B.C. government will support reforms that ensure the preservation of national programs and standards.
- B.C. does not support granting any province "special status" in the sense of having some sort of entitlement to superior powers, rights or privileges to the disadvantage of other Canadians.
- Equality of the provinces does not require uniformity.
- Constitutional dialogue must address the duplication of powers in such areas as forestry, tourism and agriculture, as well as the concern about jurisdiction over labour market and job training provisions.
- B.C. requires a greater say in economic affairs because it has quite distinct economic circumstances compared to the rest of Canada.
- There needs to be a review of economic powers to ensure that provinces are better able to achieve their economic potential while respecting the need for strong national institutions to ensure equal economic opportunities for all Canadians.
- B.C. insists that any changes to the federal spending power take into account the impact of this power in both provincial priorities and finances.
- In any devolution of power or alteration of the federal spending power, the financial aspects of the change must be expressly recognized and dealt with, perhaps through amendment of the equalization provisions, changing provincial taxation powers, or some other means.

### Alberta

- No specific comments (see Quebec section).

### Saskatchewan

- Saskatchewan would support reforms that maintain the balance of the country, that sustain the role and efficacy of our national institutions. In particular, we support a strong central government with the powers and resources necessary to regulate the nation's economy, to deal with all those things that are truly national and international, and to sustain and enhance national programs.



- With appropriate safeguards against "special deals," large-scale asymmetry and the gradual erosion of the federal government, the concept of legislative delegation (as proposed by the federal government) may provide flexibility in addressing particular needs that our Constitution now lacks.
- Saskatchewan has not come to final position on the inclusion of a Social Charter in the Constitution. We do feel, however, that the federal spending power used to support shared-cost social programs is a highly satisfactory surrogate for a Social Charter. It has several advantages:
  - It imposes minimum national standards.
  - It operates in response to political values, not judicial views about how best to make allocations from the public purse.
  - It responds to the federal nature of Canada, at least when it is exercised through cooperative federalism.
  - It is highly distributive, and allows all Canadians to have access to basic programs and services.

The federal proposal to limit use of the spending power seems to be a good compromise between meeting Quebec's concern about its effect as a blunt federal instrument, and concerns that Ottawa should retain a role in securing basic programs and services of all Canadians.

## **Manitoba**

- Our Task Force has emphasised the importance of maintaining a strong central government but also recommended flexibility in the division of powers. It said Manitoba should be open to a review of the current division of powers, including the federal spending powers, and study the possibility of increased federal involvement in policy fields which might benefit from national policy making and/or coordination. Depending on considerations of efficiency and effectiveness, consideration might be given to reducing the overlap of powers or expanding shared federal-provincial powers.
- Our Task Force stressed that flexibility must not be interpreted to permit special constitutional deals or special status offered to some provinces but not others. This would threaten the principle of provincial equality by creating different classes of provinces. An example of this is the agreement on immigration Quebec has signed with the federal government: although other provinces have been invited to negotiate an agreement as well, the clear message is that no one should expect an agreement like Quebec's.
- Changes to the division of powers cannot be discussed in isolation from the need to transfer the fiscal resources to meet any new responsibilities.

- Manitoba strongly supports delivery of the best possible services at the lowest possible cost to the taxpayer
- We recommend that s. 36 be strengthened with respect to equalization, to emphasise its importance to Canadian unity and provide strong support for key national social programs such as medicare.
- Virtually all provinces would welcome a constitutional provision to provide at least some limited guarantees for federal-provincial agreements.

## Ontario

- There is no interest in Ontario in a wholesale devolution of federal power.
- Ontario is not interested in discussing devolution at all unless there is first a recognition of the principle of transferring tax points and taxing capacity in order to meet the new responsibilities.
- Ontario's concern about bilateral deals, such as the immigration agreement between the federal government and Quebec, is that they tend to be unfair to the other partners. For example, Quebec has seen a greater transfer of resources than the number of immigrants would justify: it receives 30% of the dollars, and receives 18% of the immigrants. Quite the opposite is true for Ontario.
- The Social Charter is based on my political judgement that there really is a concern out there about the integrity of our social and economic networks. The federal proposals and demands for changes in the division of powers reaffirm the need for some common "gel".
- A critical element in the Social Charter is the mutual obligations among governments, which the Constitution must reflect. We look to an expanded s. 36 as the most productive way to express this sense of social contract.
- There is considerable resistance crossing all partisan lines in this country to give the courts the ability to enforce the Social Charter. However, the Social Charter cannot be empty or rhetorical; it must be enforceable in some way.
- The Social Charter would cover medicare, education, basic social services and welfare, and perhaps housing and the environment as well.
- The Social Charter would not take away from existing rights under s. 7 or s. 15 of Charter of Rights; it would not take away the need for or responsibility of the federal government to use its spending power.
- In terms of models, we are looking at various examples in international law as to how these obligations by governments can be enforced. (This is still the

subject of much discussion between the Ontario government and various groups and other governments.)

### New Brunswick

- Constitutional reform should focus on strengthening the social contract that has developed around health care programs, social safety nets and the commitment to equal opportunity for all Canadians. I am acutely aware of the need to manage public finances prudently; however, I believe there are ways to strengthen our social obligations without making commitments we cannot sustain.
- I and many other premiers have referred to the need to strengthen s. 36 of the *Constitution Act, 1982*, the section embodying our commitments to equalization and the reduction of regional disparities. The New Brunswick Commission on Canadian Federalism has recommended this section be amended to clarify access to a reasonable and comparable level of public services across the country.

### Nova Scotia

- Meeting Quebec's distinct needs should not become a pretext for granting all provinces powers to which they have no reasonable claim.
- The delegation of powers by one government to another is a possible means of accommodating the differences of Quebec and other provinces. Provinces like Quebec that wish to assume further responsibilities in certain fields now under federal jurisdiction could do so without leading to a general decentralization of powers. This approach might be appropriate to deal with the specific fields from which the federal government has offered to withdraw.
- Section 36 of the *Constitution Act, 1982* should be clarified and strengthened to ensure that regional economic development is properly targeted towards comparable economic opportunities in each province; and that higher payments for economic development are made to those provinces that suffer the greatest economic disparities. The explicit objective of these payment should be to eliminate the disparities and provide reasonably comparable levels of employment opportunities in all provinces.
- To maintain the integrity of our national social programs, the Constitution must:
  - protect established transfer programs for social and economic purposes;



- provide a mechanism to ensure that new federal programs in areas of provincial jurisdiction are subject to approval by a majority of the provinces; and
  - establish a review mechanism to monitor the federal and provincial governments' fulfilment of their social and economic responsibilities.
- These could be achieved by:
    - amending s. 36 to include a strong reference to the importance of stability and predictability in fiscal arrangements. It should also recognize that basic agreements negotiated periodically by the provinces and the federal government should not be terminated unilaterally by either side. Universal health care should be protected by reference to national health care standards in the Canada Clause.
    - following the federal proposal to ensure a high degree of provincial consent to new uses of the federal spending power (the 7/50 rule). However, we have concerns that this formula may not be regionally representative and urge it be amended before new provinces are created.
    - an agency mandated under a strengthened s. 36 to conduct an annual review of each government's performance in terms of their constitutional obligations.
  - We doubt the wisdom of eliminating the federal declaratory power, and recommend it be retained and its use made subject to the consent of the affected province.

### Prince Edward Island

- The federal proposals for the economic union deal with efficiency issues but not with equality in the distribution of income within Canada. I submit that now is an opportune time to strengthen Canada's constitutional commitment to equality, expressed through s. 36 of the *Constitution Act, 1982*.
- PEI generally supports the changes proposed for s. 121 of the Constitution. We do have some concerns. We need to know more about the process of determining what constitutes an economic barrier. This process cannot be allowed to nullify the legitimate policy role of a provincial government. We would not, for example, want an amended s. 121 to be used to eliminate agricultural supply management marketing boards.
- The harmonization of economic policies through intergovernmental coordination would be beneficial for Canada, but such coordination must permit regional differences in fiscal policy as local conditions require.

- The proposal to negotiate bilateral agreements on culture could lead to a significant devolution of federal responsibilities. We believe the federal government should retain the capacity to sustain national programs in multiculturalism, arts development and other areas.
- We support the view that the federal government should retain responsibility for regulation, and the proposal to strengthen consultation between the CRTC and the provinces.
- Any changes recognizing exclusive provincial jurisdiction in the areas listed in the federal proposals should consider the need for a federal coordinating role, possible efficiencies in federal delivery of programs or services, and how funding would be transferred along with responsibility in each area.
- The federal proposal to review certain programs and services according to which level of government might deliver them most efficiently is sound in principle. Possibly the federal and provincial Auditors General could be charged with making recommendations on such streamlining.
- The proposal to set up a Council of the Federation requires further discussion and refinement, particularly regarding its relationship to the Senate.

## **Newfoundland**

- Newfoundland generally supports removal of all barriers to interprovincial trade. However, we have to be careful to ensure an effective means of correcting regional economic disparity at the same time as we eliminate internal economic barriers. In addition, we question whether such measures should not require approval of provincial legislatures, rather than governments as proposed by the federal government.
- The federal proposal for a new power to manage the economic union needs further assessment. Our concerns are that it would require the approval of seven provincial governments, rather than legislatures; and that the opting-out provision seems to be unnecessary.
- The proposal to develop guidelines to harmonize economic policies has no place in the Constitution.
- Any agreements on immigration and culture negotiated between the federal government and a province should require the approval of seven provinces representing 50% of the population of the provinces to be entrenched in the Constitution.
- The proposal to limit the federal spending power is generally supported. However, Parliament must retain the power to meet the national commitment to provide for the well-being of Canadians, to further economic development

to reduce disparity in opportunities, and to provide essential public services of reasonable quality.

- The federal proposal regarding broadcasting is not a constitutional matter.
- We are concerned that the proposed s. 91A would replace 92(10)(c) [the federal declaratory power] but require approval of seven provinces. There may then be a need for an essential national power.
- The proposal to recognize areas of provincial jurisdiction is of no consequence constitutionally as each of the named areas already is an area of exclusive provincial jurisdiction.
- We have grave concerns about the proposal for legislative delegation of powers as it could result in a patch-work of differing legislative powers throughout the country, leading potentially to substantial legal inconsistencies and special status for certain provinces.
- We have concerns that the proposal to streamline certain fields appears to substantially "off-load" federal responsibility to the provinces, and ignore the need for national standards.
- We are concerned about how the proposed Council of the Federation would affect the normal working of the country. With a true Triple-E Senate, this council would be unnecessary.

## **The Yukon**

- We are concerned the proposals seem to endorse means of generating and preserving wealth but not the means of distributing it. We like the idea of a Social Charter as a counterweight to the economic union proposals, but are not prepared to give a blanket endorsement to including such a charter in the Constitution without knowing the exact nature of the rights and enforcement mechanism it would involve.
- The proposed Council of the Federation is too vague to be supported. Too many questions remain about whether it is really necessary, the exact nature of provincial approval (government or legislature), and what its actual role would be within the federation. As well, we have some difficulty with the proposal that the Yukon would have a voice but no vote in such a Council, which seems a step backward from equal participation.
- To a jurisdiction still negotiating the devolution of powers already held by the provinces, the proposals regarding new areas of provincial authority are less than pressing.



## NATIONAL INSTITUTIONS AND THE POLITICAL SYSTEM

### British Columbia

- No specific comments.

### Alberta

- Our government is committed to the Triple-E Senate.
  - The Senate should be elected, with elections taking place at the same time as provincial elections.
  - If our federation is to function properly, both the democratic principle -- equality of individuals -- and the federal principle -- equality of member states -- must be enshrined in our institutions and Constitution.
  - What we are seeking is an effective voice to assist Parliament to make decisions that reflect the needs and aspirations of Canadians in all parts of Canada. We are not seeking another level of government to paralyse the system. Instead, the reformed Senate might have a three-tier system of effectiveness, as follows:
    - In areas of sole federal jurisdiction, it would have limited responsibility, acting only as a chamber of "sober second thought."
    - In areas of shared responsibility, including immigration, agriculture and perhaps more, the Senate could have more responsibility.
    - In cases where the federal government proposes to enter areas of sole provincial responsibility, the Senate should be able to stop it and protect provincial interests.

This is only one model; it is clear that the issue of effectiveness will require much negotiation.

### Saskatchewan

- The West's concern about being marginalized in Parliament and its call for Senate reform are not trivial.
- The federal proposals for reforming the Senate respond to only one of the three "E's" demanded by the West, but the difficulties here should not be cause to abandon the principle of reform in order to provide Canadians outside

central Canada with a more effective voice at the centre, until all avenues have been explored.

## Manitoba

- Manitobans believe the best way to ensure that the federal government will be responsive to regional concerns is through reform of the Senate. For many of us in western Canada, it is the most vital issue on the constitutional agenda.
- Our government favours the Triple-E model -- elected, equal, and as effective as possible. In this regard, the federal proposals do not go far enough. Specifically,
  - the Senate must be separated from the electoral schedule of the House of Commons so the government could not hold the threat of dissolution over the heads of the Senators;
  - the principle of provincial equality should apply in the case of a renewed Senate (differences in population should not affect this basic principle); and
  - it is essential that a reformed Senate be genuinely effective, including having the authority to review government fiscal policies, to stop a national energy program (if that is its decision), and to stop a new tax or increase in an existing tax.
- Consideration should be given to the idea of locating the Senate chamber in Winnipeg, as the geographic centre of Canada. This symbolic move would also help distance Senators from the influence of the Commons.

## Ontario

- The current Senate cannot continue as it is. It does not have the legitimacy and the positive creative function that a genuinely representative federal chamber should have.
- A Triple-E Senate is not acceptable to Ontario. It would simply mirror the House of Commons in party make-up, and then duplicate the Commons' responsibilities.
- Ontario is committed to a second chamber that better reflects the federal principle. We are committed to the reform of existing institutions, and recognize the concerns that regions have about representation.

## New Brunswick

- No specific comments.

## Nova Scotia

- If there is to be a reformed Senate, representing provincial interests
  - its members must be elected and their elections should take place at the same time as provincial general elections;
  - it should reflect the linguistic, cultural and racial diversity of each province, and provide, if possible, for equal representation of men and women;
  - the principle of provincial equality should be reflected in equal provincial representation, if this can be negotiated. We recognize differences in the size of provincial populations may have to be accommodated through *equitable* representation rather than equal; and
  - it must have clear functions, distinct from those of the House of Commons, and the power to carry them out effectively.
- In more detail, a reformed Senate should
  - not be a confidence chamber;
  - be able to initiate any type of bill except for money bills;
  - be able to amend and vote on all Commons bills;
  - enjoy special powers not possessed by the Commons, such as ratification of certain appointments to regulatory agencies and other government bodies of regional importance, ambassadorial posts and the Supreme Court;
  - have specific responsibility for overseeing national standards of our principal social programs;
  - monitor the efforts of all governments under (a) s. 36 of the *Constitution Act, 1982*, and (b) intergovernmental memoranda and any constitutional provisions relating to the economic union, and issuing reports in this regard;
  - have double majority rules for bills, including constitutional amendments, regarding language and culture, and for ratifying civil code justices on the Supreme Court; and



- have a right of absolute veto over ramifications and matters relating to language and culture; and on all other matters, a suspensive veto until the next national election, after which the new Commons could override the Senate by a simple majority.

### **Prince Edward Island**

- I endorse the proposals to reform the rules of the House of Commons. I believe such reforms have application to all legislatures.
- I welcome proposals to strengthen the Senate and better enable it to protect and promote the interests of the provinces and regions, and of minorities whose interests are not always fully reflected in the political process. Specifically,
  - I want to work towards a more effective Senate with more specific and focused powers, perhaps in the areas of language rights, minority rights and the environment, for example.
  - I want to work towards a more equitable Senate that better balances representation among provinces, recognizing that it would not be realistic for PEI to seek equality in Senate seats. Equitable representation would mean the distribution of seats should be weighted in favour of smaller provinces. However, given the link in the Constitution between Senate and Commons seats, PEI would not support an arrangement in the Senate that decreased the number of our Mps.
  - I am not as concerned with the concept of an elected Senate as I am with the hope that provinces would have some role in their method of selection.

### **Newfoundland**

- This Government supports a true Triple-E Senate, and believes anything less is a denial of the fundamental principles of federalism. Our concerns about the federal government's proposals regarding Senate reform are:
  - There is no need for Senate elections to coincide with House of Commons elections, and it would be preferable to have Senate elections at a fixed time for a fixed term.
  - The Senate should provide for equal representation from each province.

- The Senate and the Commons should remain as coordinate legislative bodies, with the Senate having the same power as the Commons. The only limitation on the Senate's power should be that it could not delay the federal government's basic annual budget, nor defeat the government by a vote of non-confidence.
- The provision for a double majority vote on matters of language and culture should be limited to very specific matters.
- On the proposal respecting the ratification of appointments to regulatory boards and agencies, it is suggested that, rather than entrenching this provision in the Constitution, a general principle be followed such as requiring that the ratification of the appointment of any chairman, president or chief executive officer of a crown corporation, board or commission be subject to the application of the *Financial Administration Act*.
- Rather than the proposal regarding the appointment of judges to the Supreme Court of Canada, it would be preferable to continue such appointments by the federal government alone, but make the appointment of common law judges subject to the approval of Senators from common law provinces and territories, and the appointment of civil law judges subject to the approval of Quebec Senators.

### The Yukon

- The Constitution seems to be the wrong mechanism to effect the proposals regarding Parliamentary reforms.
- We do not see the Senate as a primary constitutional vehicle for the Yukon. At present we have one Senator, and the proposals for a reformed Senate do not hold out much promise of greater representation. To our knowledge, none of the proposals for a Triple-E Senate advocates equal representation for the territories.
- This government would have to be confident in the means by which guaranteed Aboriginal representation in the Senate would be achieved before it could support it.
- No proposals by any government provide for equitable representation for women and other under-represented groups -- an idea whose time has come.

## PROCESS OF CONSTITUTIONAL REFORM

### British Columbia

- No specific comments.

### Alberta

- The federal government, all provinces, the territories -- and, where appropriate, the Aboriginal people -- must sit down together at this constitutional table. No success can come out of any process that locks out any of the partners in Confederation.

### Saskatchewan

- No specific comments.

### Manitoba

- The federal and provincial governments should meet to exchange views between February 28, when the Special Joint Committee's report is due, and April 10, when the federal government is expected to release its revised proposals. I hope Quebec would be present at these discussions.
- Our government is committed to taking the time necessary for public consultation.
- Although the efforts of the Special Joint Committee should be aimed at presenting us with a smaller, more manageable agenda, it must be one that responds to the priorities of all Canadians.

### Ontario

- Until there are negotiations involving all the provinces, there will be no agreement.
- We are still waiting for serious negotiations with other provinces and Quebec on these issues.



### **New Brunswick**

- It is important for Canada that the federal joint committee submit a report to Parliament that reflects a strong all-party consensus in which all Canadians can see their elected representatives reaching beyond partisan positions.

### **Nova Scotia**

- No specific comments.

### **Prince Edward Island**

- We must first work towards a consensus on the amending formula before adding it to the constitutional agenda.

### **Newfoundland**

- The significance of the constitutional issues we are dealing with, and the wide divergence of opinion on these issues, can only be dealt with effectively through something like a constituent assembly.

### **The Yukon**

- This government opposes the amending formula as set out in the Meech Lake Accord (whereby unanimity would be required to allow existing territories to become provinces), and supports a formula whereby no provincial support would be required.
- We believe on other issues as well the unanimity rule is regressive and will only too easily lead to deadlock.
- We are also offended by the suggestion that should any province wish to extend its boundaries northward, the consent of the affected territory would not be required.
- Our country's full attention should be focused on the issues that *must* be done now: the amending formula, the entrenchment of the Aboriginal right to self-government, recognition of Quebec as a distinct society, and perhaps a democratic Senate.

















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